HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (M) NO. 212 OF 2006.
IN
FAMILY COURT APPEAL NO. 88 OF 2004.

Sou. Jyoti Vilas Ghogre. ..Applicant.

Versus.

Vilas Raghunath Ghogre. ..Respondent.

Shri. Madhav J. Jamdar for the applicant.

Shri. S. V. Pitre for the respondents.

CORAM: S.B.MHASE &
S.R.SATHE JJ

DATE: OCTOBER 10, 2006.

P.C.

1. Heard both sides. This is application by the respondent - wife for tendering additional evidence. The respondent has filed an application in the Family Court for getting divorce on grounds of cruelty and desertion. Desertion, according to the husband, has taken place on 17.8.1999 and the petition has been presented on 22.11.2001. Thus, according to the appellant - husband, the period of desertion was complete, therefore, the petition for divorce should have been granted. This aspect has been challenged by the wife. There is already evidence on record to show that the flat was purchased in May 2000 and the loan

for taking the said flat was taken. It has also come in evidence that for taking the said loan, the present applicant - wife has paid an amount of Rs.60,000/-. She also claims that she has paid Rs.25,000/- in order to pay loan of two wheelers which was standing in the name of the appellant - husband. Since this incident has taken place after the date of so called desertion and since the amounts were claimed to be advanced by the wife, we asked the learned counsel for the applicant - wife, as to what is the evidence to show that the wife was possessed of such amount. Learned counsel for the applicant - wife submitted that the transaction was by cheque and he can produce relevant bank documents in order to support the claim of the wife.

2. Since we find that we have to consider an issue of desertion, those documents would have been helpful or useful to arrive at a just conclusion whether there was desertion or not.

3. In view of the above suggestion and also to make out the case of the applicant - wife more appropriately, the applicant- wife has brought on record the documents annexed to the application. We have perused those documents. Those documents show

that the loan transaction in between the parties and in-laws have taken place after the period of desertion. We find that the Bank Account Extract of the applicant - wife also shows that the cheques were issued by her on 17.4.2000, 26.5.2000, 7.7.2000, 4.8.2000, 12.7.2001, 6.8.2001 and 7.9.2001 and it also shows that the monetary transactions were going on in between the husband and wife till the filing of the marriage petition. Thus, ultimately we find that these documents are relevant and necessary in the interest of justice to be taken on record in order to find out as to whether the desertion has taken place between the husband and wife or the wife has deserted the husband.

4. Learned Counsel for the respondent - husband, Shri. Pitre tried to vehemently oppose the said application, stating that the loan transactions were between the parties, that does not mean that the house in question was taken as a result of the contributions by the wife. We would like to make it clear at this stage, and in this matter that we are not considering the issue as to the ownership of the flat in question and, therefore, this evidence is not being looked from that angle and this evidence is considered for the purpose of deciding the issue as to whether there is desertion or not. Looking from that angle, we

find that those documents are relevant at this stage. We do not find any force in the submission of learned counsel for the respondent - husband, Shri. Pitre. Therefore, we pass following order.

: O R D E R :

1) Civil application is allowed.

2) Documents annexed to the Civil application be taken on record.

(S.R.SATHE,J.) **(S.B.MHASE, J.)**

:srp/2006/